

Force Western Test Range, Vandenberg Air Force Base, Calif.

(7) The Commander, Air Force Western Test Range will extend full cooperation relating to the public use of the danger area and will fully consider every reasonable request for its use in light of requirements for national security and safety of persons and property.

[Regs., May 5, 1965, ENGOW-ON] (sec. 4, 28 Stat. 362; 33 U.S.C. 1)

LAWRENCE H. WALKER, Jr.,
Brigadier General, U.S. Army,
Acting The Adjutant General.

[F.R. Doc. 65-5094; Filed, May 13, 1965; 8:46 a.m.]

PART 205—DUMPING GROUNDS REGULATIONS

PART 207—NAVIGATION REGULATIONS

Entrance to Seaports and Lake Washington, Wash.

1. Pursuant to the provisions of section 4 of the River and Harbor Act of March 3, 1905 (33 Stat. 1147; 33 U.S.C. 419) and section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 205.80 establishing and governing the use of dumping grounds and prohibited dumping grounds in waters adjacent to and waters constituting the approaches and entrances to certain ports is hereby amended by modifying paragraphs (b) (9), (10), (12), and (13), and (c) (5), effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 205.80 Entrance to seaports.

(b) Dumping grounds. * * *

(9) The waters of the Gulf of Mexico off Calcasieu Pass, La., within the following areas:

(i) *Area A.* Beginning at West Jetty at latitude 29°44'59", longitude 93°20'36"; thence to latitude 29°44'51", longitude 93°21'33"; thence to latitude 29°45'38", longitude 93°21'41"; thence along the mean high tide shore line to West Jetty; thence along West Jetty to point of beginning.

(ii) *Area B.* Beginning at East Jetty at latitude 29°45'00", longitude 93°20'25"; thence along East Jetty to the mean high tide shore line; thence along the mean high tide shore line to latitude 29°46'02", longitude 93°19'37"; thence to latitude 29°45'07", longitude 93°19'28"; thence to point of beginning.

(iii) *Area C.* Beginning at latitude 29°39'47", longitude 93°19'44"; thence to latitude 29°39'39", longitude 93°20'44"; thence to latitude 29°44'22", longitude 93°21'31"; thence to latitude 29°44'30", longitude 93°20'32"; thence to point of beginning.

(iv) *Area D.* Beginning at latitude 29°34'08", longitude 93°16'19"; thence to latitude 29°33'06", longitude 93°16'38"; thence to latitude 29°37'21", longitude 93°20'22"; thence to latitude 29°37'45", longitude 93°20'28"; thence to latitude 29°37'52", longitude 93°19'25";

thence to latitude 29°37'29", longitude 93°19'23"; thence to point of beginning.

(10) The waters of the Gulf of Mexico off Sabine Pass, Tex., within the following areas:

(i) *Area A.* Beginning at latitude 29°38'09", longitude 93°49'23"; thence to latitude 29°35'53", longitude 93°48'18"; thence to latitude 29°35'06", longitude 93°50'24"; thence to latitude 29°36'37", longitude 93°51'09"; thence to latitude 29°37'00", longitude 93°50'06"; thence to latitude 29°37'46", longitude 93°50'26"; thence to point of beginning.

(ii) *Area B.* Beginning at latitude 29°38'13", longitude 93°49'13"; thence to latitude 29°38'36", longitude 93°48'09"; thence to latitude 29°36'20", longitude 93°47'04"; thence to latitude 29°35'57", longitude 93°48'07"; thence to point of beginning.

(12) The waters of the Gulf of Mexico off Galveston Entrance, Tex., within the following areas:

(i) *Area A.* Beginning at latitude 29°20'02", longitude 94°40'46"; thence to latitude 29°18'56", longitude 94°38'40"; thence to latitude 29°18'04", longitude 94°39'15"; thence to latitude 29°19'11", longitude 94°41'21"; thence to point of beginning.

(ii) *Area B.* Beginning at latitude 29°20'11", longitude 94°40'40"; thence to latitude 29°21'02", longitude 94°40'05"; thence to latitude 29°19'56", longitude 94°37'59"; thence to latitude 29°19'04", longitude 94°38'34"; thence to point of beginning.

(iii) *Area C.* Beginning at latitude 29°16'54", longitude 94°41'30"; thence to latitude 29°14'24", longitude 94°38'42"; thence to latitude 29°15'54", longitude 94°37'06"; thence to latitude 29°18'00", longitude 94°39'30"; thence to point of beginning.

(13) The waters of the Gulf of Mexico off Galveston Entrance, Texas bounded by the mean high tide shore line, Galveston North Jetty, and the following lines: Beginning at Galveston North Jetty Light at latitude 29°20'44", longitude 94°40'44"; thence to latitude 29°23'24", longitude 94°42'30"; thence to latitude 29°25'18", longitude 94°40'00"; thence along longitude 94°40'00" to shore.

(c) Prohibited dumping grounds. * * *

(5) The waters of the Gulf of Mexico off Louisiana and Texas Coasts, except as provided in paragraph (b) (9) through

(13) of this section, bounded by the mean high tide shore line and the following lines: Beginning at Galveston Jetty Light at latitude 29°19'39", longitude 94°41'33"; thence to latitude 28°01'12", longitude 94°41'33"; thence along the 40 fathom line to latitude 28°01'18", longitude 94°13'42"; thence to Heald Bank Lighted Whistle Buoy 2 at latitude 29°05'00", longitude 94°13'42"; thence to Sabine Bank Light at latitude 29°28'18", longitude 93°43'24"; thence to Sabine Bank East End Lighted Whistle Buoy 1 at latitude 29°27'00", longitude 93°18'30"; thence 015° (true) to shore.

[Regs., May 1, 1965, 1507-32 (Entrance to Seaports)—ENGOW-ON] (sec. 4, 33 Stat. 1147, sec. 7, 40 Stat. 266; 33 U.S.C. 1, 419)

2. Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1897 (40 Stat. 266; 33 U.S.C. 1), § 207.750 is hereby amended with respect to paragraph (h) changing the description and marking of the seaplane restricted area in Lake Washington, Wash., in subparagraph (1), redesignating subdivision (iv) of subparagraph (2) as (v) and prescribing a new subdivision (iv) to control the use of the area by swimmers, effective 30 days after publication in the FEDERAL REGISTER as follows:

§ 207.750 Puget Sound Area, Wash.

(h) *Lake Washington; seaplane restricted area, U.S. Naval Air Station, Sand Point, Seattle.*—(1) *The area.* (i) Beginning at a point 343°, 2,650 yards from the control tower atop Building No. 264, U.S. Naval Air Station, Seattle, which is situated at latitude 47°40'56", longitude 122°15'24"; thence 347°, 2,000 yards; thence 077°, 500 yards; thence 167°, 2,000 yards, and thence to the point of beginning.

(ii) The area will be marked by special pneumatic buoys lying in a single straight line along the western boundary of the area, as follows: Six buoys spaced 400 yards apart, commencing at the point of beginning. Each end buoy will be equipped with a yellow light and all other buoys with green lights. These lights will be lighted only during night flying operations. Each buoy will be marked in addition by black and yellow vertical stripes.

(2) *The regulations.* * * *

(iv) No swimmers, scuba divers, or underwater vehicles shall operate or loiter in this area.

(v) The regulations in this paragraph shall be enforced by the Commandant, 13th Naval District, or his authorized representative.

[Regs., May 1, 1965, 207.750 (Lake Washington, Wash.)—ENGOW-ON] (sec. 7, 40 Stat. 266; 33 U.S.C. 1)

LAWRENCE H. WALKER, Jr.,
Brigadier General, U.S. Army,
Acting The Adjutant General.

[F.R. Doc. 65-5095; Filed, May 13, 1965; 8:46 a.m.]

Title 37—PATENTS, TRADE-MARKS, AND COPYRIGHTS

Chapter I—Patent Office, Department of Commerce

PART 1—RULES OF PRACTICE IN PATENT CASES

PART 3—FORMS FOR PATENTS CASES

Interference Practice

The following amendments are made to take effect July 1, 1965, and to apply only to interferences declared on and after that date. In all other cases, the rules prior to amendment shall apply.

The text of these rules, except in certain particulars, was published in the *FEDERAL REGISTER* of February 26, 1965 (30 P.R. 2552-2556), and all persons who so desired were invited to submit written data, views, arguments or suggestions, or to attend the hearing held on April 8, 1965. The rules are being adopted after full consideration of all the material submitted and of all the views expressed at the oral hearing. The departures from the published text are made in the light of such material and views.

The text of the amendments is as follows:

Paragraphs (a) and (b) of § 1.203 are amended to read as follows:

§ 1.203 Preparation for interference between applications; suggestion of claims for interference.

(a) Before the declaration of interference it must be determined by the examiner that there is common subject matter in the cases of the respective parties, patentable to each of the respective parties, subject to the determination of the question of priority. Claims in the same language, to form the counts of the interference, must be present or be presented, in each application; except that, in cases where, owing to the nature of the disclosures in the respective applications, it is not possible for all applications to properly include a claim in identical phraseology to define the common invention, an interference may be declared, with the approval of the Commissioner, using as a count representing the interfering subject matter a claim differing from the corresponding claims of one or more of the interfering applications by an immaterial limitation or variation.

(b) When the claims of two or more applications differ in phraseology, but relate to substantially the same patentable subject matter, the examiner shall, if it has been determined that an interference should be declared, suggest to the parties such claims as are necessary to cover the common invention in the same language. The parties to whom the claims are suggested will be required to make those claims (i.e., present the suggested claims in their applications by amendment) within a specified time, not less than 30 days, in order that an interference may be declared. The failure or refusal of any applicant to make any claim suggested within the time specified, shall be taken without further action as a disclaimer of the invention covered by that claim unless the time be extended.

Paragraph (a) of § 1.205 is amended to read as follows:

§ 1.205 Interference with a patent; copying claims from patent.

(a) Before an interference will be declared with a patent, the applicant must present in his application, copies of all of the claims of the patent which also define his invention and such claims must be patentable in the application. However, an interference may be declared after copying the claims excluding an

immaterial limitation or variation if such immaterial limitation or variation is not clearly supported in the application or if the applicant otherwise makes a satisfactory showing in justification thereof.

Section 1.206 is amended to read as follows:

§ 1.206 Interference with a patent; claims improperly copied.

(a) Where claims are copied from a patent and the examiner is of the opinion that the applicant can make only some of the claims so copied, he shall notify the applicant to that effect, state why he is of the opinion the applicant cannot make the other claims and state further that the interference will be promptly declared. The applicant may proceed under § 1.231 if he desires to further contest his right to make the claims not included in the declaration of the interference.

(b) Where the examiner is of the opinion that none of the claims can be made, he shall reject the copied claims stating in his action why the applicant cannot make the claims and set a time limit, not less than 30 days, for reply. If, after response by the applicant, the rejection is made final, a similar time limit shall be set for appeal. Failure to respond or appeal, as the case may be, within the time fixed will, in the absence of a satisfactory showing, be deemed a disclaimer of the invention claimed.

Section 1.207 is amended to read as follows:

§ 1.207 Preparation of interference papers and declaration of interference.

(a) When an interference is found to exist and the applications are in condition therefor, the primary examiner shall forward the files to the Board of Patent Interferences together with a statement indicating the claims of each applicant or patentee which are to form the respective counts of the interference and also indicating whether any party is entitled to the benefit of the filing date of any prior application as to the subject matter in issue, and, if so, identifying such application.

(b) A patent interference examiner will institute and declare the interference by forwarding notices to the several parties to the proceeding. Each notice shall include the name and residence of each of the other parties and those of his attorney or agent, and of any assignee, and will identify the application of each opposing party by serial number and filing date, or in the case of a patentee by the number and date of the patent. The notices shall also specify the issue of the interference, which shall be clearly and concisely defined in only as many counts as may be necessary to define the interfering subject matter (but in the case of an interference with a patent all the claims of the patent which can be made by the applicant should constitute the counts), and shall indicate the claim or claims of the respective cases corresponding to the count or counts. If the application or patent of a party included in the interference is a division, contin-

uation or continuation-in-part of a prior application and the examiner has determined that it is entitled to the filing date of such prior application, the notices shall so state. Except as noted in paragraph (c) of this section, the notices shall also set a schedule of times for taking various actions as follows:

(1) For filing the preliminary statements required by § 1.215 and serving notice of such filing, not less than 2 months from the date of declaration.

(2) For each party who files a preliminary statement to serve a copy thereof on each opposing party who also files a preliminary statement as required by § 1.215(b), not less than 15 days after the expiration of the time for filing preliminary statements.

(3) For filing motions under § 1.231, not less than 4 months from declaration.

(c) The notices of interference shall be forwarded by the patent interference examiner to all the parties, in care of their attorneys or agents; a copy of the notices will also be sent the patentees in person and, if the patent in interference has been assigned, to the assignees.

(d) When the notices sent in the interest of a patent are returned to the Office undelivered, or when one of the parties resides abroad and his agent in the United States is unknown, additional notice may be given by publication in the *Official Gazette* for such period of time as the Commissioner may direct.

(e) In a case where the showing required by § 1.204(c) is deemed insufficient (§ 1.228) the notice of interference will not set the time schedule specified in paragraph (b) of this section but will be accompanied by an order to show cause by the Board of Patent Interferences as provided by § 1.228.

§ 1.209 [Cancelled]

Section 1.209 is cancelled.

Section 1.211 is amended to read as follows:

§ 1.211 Jurisdiction of interference.

(a) Upon the institution and declaration of the interference, as provided in § 1.207, the Board of Patent Interferences will take jurisdiction of the same, which will then become a contested case.

(b) The primary examiner will retain jurisdiction of the case until the declaration of interference is made.

Section 1.215 is amended to read as follows:

§ 1.215 Preliminary statement required.

(a) Each party to the interference will be required to file a concise preliminary statement giving certain facts and dates, on or before a date fixed by the Office. The preliminary statement must be signed and sworn to by the inventor but in appropriate circumstances, as when the inventor is dead or a showing is made of inability to obtain a statement from the inventor, the preliminary statement may be made by the personal representative or assignee or by someone authorized or entitled to make the statement and having knowledge of the facts.

(b) A party who files a preliminary statement shall at the same time notify

all opposing parties of that fact and by the time set for that purpose he shall serve a copy of his preliminary statement including any attached documents on every opposing party from whom he has received notification of the filing of a statement.

(c) A party who fails to serve a copy of his preliminary statement as required in paragraph (b) of this section will be restricted to his effective filing date. (See § 1.223(c).)

Section 1.216 is amended to read as follows:

§ 1.216 Contents of the preliminary statement.

(a) The preliminary statement must state that the party made the invention set forth by each count of the interference, and whether the invention was made in the United States or abroad. When the invention was made in the United States the preliminary statement must set forth as to the invention defined by each count the following facts including a brief statement as to the specific nature of each of the respective acts alleged:

(1) The date upon which the first drawing of the invention was made; if a drawing of the invention has not been made prior to the filing date of the application, it must be so stated.

(2) The date upon which the first written description of the invention was made; if a written description of the invention has not been made prior to the filing date of the application, it must be so stated.

(3) The date upon which the invention was first disclosed to another person; if the invention was not disclosed to another person prior to the filing date of the application, it must be so stated.

(4) The date of the first act or acts susceptible of proof (other than making a drawing or written description or disclosing the invention to another person) which, if proven, would establish conception of the invention, and a brief description of such act or acts; if there have been no such acts, it must be so stated.

(5) The date of the actual reduction to practice of the invention; if the invention has not been actually reduced to practice before the filing date of the application, it must be so stated.

(6) The date after conception of the invention when active exercise of reasonable diligence toward reducing the invention to practice began.

(b) When an allegation as to the first drawing (paragraph (a) (1) of this section) and/or as to the first written description (paragraph (a) (2) of this section) is made, a copy of such drawing and/or written description must be attached to the statement.

(c) If a party intends to rely solely on a prior application, domestic or foreign, and on no other evidence, the preliminary statement may so state and need not be signed or sworn to by the inventor.

Section 1.218 is amended to read as follows:

§ 1.218 Time for filing preliminary statement.

The time for filing the preliminary statement is ordinarily specified in the notices of interference mailed to the parties (§ 1.207). (For extension of the time set see § 1.245.)

§ 1.221 [Cancelled]

Section 1.221 is cancelled.

Paragraphs (a) and (c) of § 1.223 are amended to read as follows:

§ 1.223 Effect of statement.

(a) The preliminary statement should be carefully prepared, as a party will not be allowed to amend his statement in any way except by motion under § 1.222, and any doubts as to definiteness or sufficiency of any allegation or compliance with formal requirements will be resolved against the party concerned by restriction to his record date or to the latest date of a period alleged as may be appropriate. Prior to final hearing a party will not be notified of any defect in his statement except that whenever a resulting restriction provides basis for an order to show cause (§ 1.225) such order will be entered including notice of the defect. Each of the parties by whom or on whose behalf a preliminary statement is made will be strictly held in his proofs to the dates set forth therein. This includes joint applicants or patentees; a new preliminary statement will not be received in the event the application is amended or the patent is corrected to remove the names of those not inventors, nor will a preliminary statement alleging different dates be received if an application is amended or a patent is corrected to include a joint inventor, except by motion under § 1.222.

(c) If a party to an interference fails to file a statement, testimony will not be received subsequently from him to prove that he made the invention at a date prior to his effective filing date. If a party alleges in his statement a date of first drawing or first written description but does not attach a copy of such drawing or written description as required by § 1.216(b), he will be restricted to his effective filing date as to that allegation.

Section 1.224 is amended to read as follows:

§ 1.224 Reliance on prior application.

A party will not be permitted to rely on any prior application to obtain the benefit of its filing date unless the prior application is specified in the notice of interference (see § 1.226) or its benefit is sought by a motion filed in accordance with § 1.231. In the latter case, complete copies of the contents of the application file the benefit of which is sought, except affidavits under §§ 1.131, 1.202, and 1.204, must be served on all opposing parties with the motion, and in the case of a foreign application the necessary papers to prove a date of priority under 35 U.S.C. 119 including a translation where required (§ 1.55), must be filed (if they

are not already of record) and copies served on all opposing parties with the motion. In either case the proof of service required by § 1.247 must include the prior application as well as the motion.

Section 1.225 is amended to read as follows:

§ 1.225 Failure of junior party to file statements or to overcome filing date of senior party.

If a junior party to an interference fails to file a preliminary statement, or if his statement fails to overcome the prima facie case made by the filing date of the application of another party, judgment on the record will be entered against such junior party unless he has filed a motion under § 1.231, within the time set for such motions, for some action in the interference. If such a motion has been timely filed but does not result in action in the interference which will remove the basis for a judgment on the record, such judgment on the record will be entered unless the motion related to matters which may be reviewed at final hearing under § 1.258, and within 20 days of the decision disposing of the motion the junior party concerned requests that final hearing be set to review such matters.

Section 1.226 is amended to read as follows:

§ 1.226 Access to applications.

After the mailing of the notices of interference each party will be permitted to see or obtain copies of each other's applications which are set out in the notices except for copies of affidavits filed under §§ 1.131, 1.202, and 1.204 which shall be and remain sealed until preliminary statements are opened under § 1.227, except as provided in § 1.228 regarding affidavits under § 1.204(c).

Section 1.227 is amended to read as follows:

§ 1.227 Access to preliminary statements.

(a) The preliminary statements shall be open to the inspection of the senior party, and of any junior party who himself filed a statement, after the date set for the serving of preliminary statements (§ 1.207(b)(2)), but shall not be open to inspection prior to that time.

(b) A junior party who fails to file a preliminary statement shall not have access to the preliminary statement of any other party.

(c) If the interference be terminated before the preliminary statements have been opened to the inspection of the parties, the preliminary statements will remain sealed.

(d) After termination of an interference any unopened statements will be removed from the interference file and preserved by the Office, and in no case will such statements be open to the inspection of anyone (including opposing parties) without authority from the Commissioner.

Section 1.228 is amended to read as follows:

§ 1.228 Summary judgment.

When an interference is declared on the basis of a showing under § 1.204(c), such showing will be examined by a Board of Patent Interferences. If the Board considers that the facts set out in the showing provide sufficient basis for overcoming the effective filing date of the patentee, the interference will proceed in the normal manner as provided by the rules in this part; otherwise an order shall be entered concurrently with the notice of interference pointing out wherein the showing is insufficient and notifying the applicant making such showing that summary judgment will be rendered against him because of such insufficiency at the expiration of a period specified in the notice, not less than thirty days, unless cause be shown why such action should not be taken. Any response made during the specified period will be considered by the Board without an oral hearing unless such hearing is requested by the applicant, but additional affidavits or exhibits will not be considered unless accompanied by a showing justifying their omission from the original showing. If the applicant files a response to the order to show cause, the patentee will be furnished with one of the copies of the showing under § 1.204(c) and will be allowed 30 days from its mailing date within which to present his views with respect thereto. He shall also be entitled to be represented at any oral hearing on the matter.

Section 1.231 is amended to read as follows:

§ 1.231 Motions before the primary examiner.

(a) Within the period set in the notice of interference for filing motions any party to an interference may file a motion seeking:

(1) To dissolve as to one or more counts, except that such motion based on facts sought to be established by affidavits or evidence outside of official records and printed publications will not normally be considered, and when one of the parties to the interference is a patentee, no motion to dissolve on the ground that the subject matter of the count is unpatentable to all parties or is unpatentable to the patentee will be considered, except that a motion to dissolve as to the patentee may be brought which is limited to such matters as may be considered at final hearing (§ 1.258). Where a motion to dissolve is based on prior art, service on opposing parties must include copies of such prior art.

(2) To amend the issue by addition or substitution of new counts.

(3) To substitute any other application owned by him as to the existing issue, or to include any other application or patent owned by him as to any subject matter other than the existing issue but disclosed in his application or patent involved in the interference and in an opposing party's application or patent in the interference which should be made the basis of interference between himself and such other party. Copies of such other application must be served on all other parties and the motion must be accompanied by proof of such service.

(4) To shift the burden of proof, or to be accorded the benefit of an earlier application which would not change the order of the parties.

(5) To amend an involved application by adding or removing the names of one or more inventors as provided in § 1.45.

(b) Each motion must contain a full statement of the grounds therefor and reasoning in support thereof. Any opposition to a motion must be filed within 20 days of the expiration of the time set for filing motions and the moving party may, if he desires, file a reply to such opposition within 15 days of the date the opposition was filed. If a party files a timely motion to dissolve, any other party may file a motion to amend within 20 days of the expiration of the time set for filing motions. Service on opposing parties of an opposition to a motion to amend which is based on prior art must include copies of such prior art. In the case of action by the primary examiner under § 1.237, such motions may be made within 20 days from the date of the primary examiner's decision on motion wherein such action was incorporated or the date of the communication giving notice to the parties of the proposed dissolution of the interference.

(c) A motion to amend or to substitute another application must be accompanied by an amendment adding the claims in question to the application concerned if such claims are not already in that application.

(d) All proper motions will be transmitted to and considered by the primary examiner without oral argument. Requests for reconsideration will not be entertained.

(e) In the determination of a motion to dissolve an interference between an application and a patent, the prior art of record in the patent file may be referred to for the purpose of construing the issue.

(f) Upon the granting of a motion to amend and the adoption of the claims by the other parties within a time specified, or upon the granting of a motion to substitute another application, and after the expiration of the time for filing any new preliminary statements, a patent interference examiner shall redeclare the interference or shall declare such other interferences as may be necessary to include said claims. A preliminary statement as to the added claims need not be filed if a party states that he intends to rely on the original statement and such a declaration as to added claims need not be signed or sworn to by the inventor in person. A second time for filing motions will not be set and subsequent motions with respect to matters which have been once considered by the primary examiner will not be considered.

§§ 1.232-1.236 [Cancelled]

Sections 1.232 through 1.236 are cancelled.

Section 1.237 is amended to read as follows:

§ 1.237 Dissolution at the request of examiner.

If, during the pendency of an interference a reference or other reason be

found which, in the opinion of the primary examiner, renders all or part of the counts unpatentable, the attention of the Board of Patent Interferences shall be called thereto. The interference may be suspended and referred to the primary examiner for consideration of the matter, in which case the parties will be notified of the reason to be considered. Arguments of the parties regarding the matter will be considered if filed within 20 days of the notification. The interference will be continued or dissolved in accordance with the determination by the primary examiner. If such reference or reason be found while the interference is before the primary examiner for determination of a motion, decision thereon may be incorporated in the decision on the motion, but the parties shall be entitled to reconsideration if they have not submitted arguments on the matter.

§ 1.241 [Cancelled]

Section 1.241 is cancelled.

Section 1.243 is amended to read as follows:

§ 1.243 Motions before the Board of Patent Interferences.

Motions relating to matters other than those specified in § 1.231 will be determined by a patent interference examiner or the Board of Patent Interferences, as may be deemed appropriate. Such motions shall be made in writing and shall contain a full statement of the action sought and the grounds therefor, and satisfactory proof of any facts required must accompany the motion. Oral hearings will not be held except on order of a patent interference examiner or Board of Patent Interferences. Briefs or memoranda in support of such motions shall accompany the motion. Any reply to the motion, together with any brief or memorandum in support thereof, shall be filed within 10 days unless some other date is set by the patent interference examiner.

Paragraph (d) of § 1.244 is amended to read as follows:

§ 1.244 Motions; miscellaneous provisions.

(d) There is no appeal from decisions rendered on motions but the Commissioner may consider on petition any matter involving abuse of discretion or the exercise of his supervisory authority, or such other matters as he may deem proper to consider. Any such petition must comply with § 1.181 and, if not filed within 20 days from the decision complained of, may be dismissed as untimely. Any reply thereto must be filed within 10 days from the filing of the petition.

§ 1.246 [Cancelled]

Section 1.246 is cancelled.

Section 1.247 is amended to read as follows:

§ 1.247 Service of papers.

Every paper filed in the Patent Office in interference proceedings must be

served upon the other parties in the manner provided in § 1.248, except the following:

(a) Preliminary statements at the time of filing but see § 1.215 (b) and (c),
(b) Documentary exhibits introduced at the taking of a deposition,

(c) Certified transcripts of testimony under § 1.276 (but copies of the record must be served (§ 1.253)),

(d) Statutory disclaimers under 35 U.S.C. 253. The specification in certain sections that a designated paper must be served does not imply that other papers, not excepted above need not be served. However, the requirement for service of designated papers may be waived under particular circumstances and service may be required of other designated papers which need not ordinarily be served. Proof of such service must be made before the paper will be considered in the interference by the Office. A statement of the attorney, attached to or appearing in the original paper when filed, clearly stating the time and manner in which service was made will be accepted as prima facie proof of service.

Section 1.248 is amended to read as follows:

§ 1.248 Service of papers; manner of service.

Service of papers must be on the attorney or agent of the party if there be such or on the party if there is no attorney or agent, and may be made in either of the following ways:

(a) By delivering a copy of the paper to the person served;

(b) By leaving a copy at the usual place of business of the person served with someone in his employment;

(c) When the person served has no usual place of business, by leaving a copy at his residence, with a member of his family over 14 years of age and of discretion;

(d) Transmission by first class mail which may also be certified or registered. When service is by mail the date of mailing will be regarded as the date of service. Whenever it shall be satisfactorily shown to the Commissioner that none of the above modes of obtaining or serving the paper is practicable, service may be by notice published in the Official Gazette.

Paragraph (b) of § 1.251 is amended, and new paragraph (d) is added, as follows:

§ 1.251 Assignment of times for taking testimony.

(b) The time for taking testimony will ordinarily be assigned in notices sent to the parties after motions under § 1.231 have been disposed of or, if no such motions have been filed, after the close of the motion period (§ 1.231).

(d) The date for final hearing will ordinarily be set in separate notices.

Paragraphs (a), (d), and (f) of § 1.253 are amended to read as follows:

§ 1.253 Copies of the testimony.

(a) In addition to the certified transcript of the testimony (§§ 1.275 to

1.278), three true copies of the record of each party must be filed for the use of the Patent Office (a total of four copies), and one true copy of the record must be served upon each of the opposing parties.

(d) The copies of the record for all parties must be filed and served on the opposing parties by the date specified in the order setting times for taking testimony or such extensions as may be granted.

(f) When the copies of the record are in typewritten form, they must be clearly legible on opaque unglazed, durable paper approximately 8½ by 11 inches in size (letter size) and one of the three copies must be a ribbon copy, but need not be executed by the certifying officer. (The certified transcript may be a properly executed carbon copy. See § 1.277.) The typing shall be on one side of the paper, in not smaller than pica type; and double-spaced with a margin of 1½ inches on the left-hand side of the page. The sheets shall be bound at their left edges, in such manner to lie flat when opened, in a volume or volumes of convenient size (approximately 100 pages per volume is suggested) provided with covers. Multigraphed or otherwise reproduced copies conforming to the standards specified will be accepted.

Section 1.254 is amended to read as follows:

§ 1.254 Briefs at final hearing.

Briefs at final hearing before the Board of Patent Interferences shall be submitted in printed form, except that when not in excess of 50 legal-size double spaced typewritten pages, or the equivalent thereof, and in any other case where satisfactory reason therefor is shown, they may be submitted in typewritten form. If submitted in printed form, they shall be the same in size and the same as to page and print as is specified for printed copies of testimony. Typewritten briefs shall conform to the requirements for typewritten copies of testimony, except that legal-size paper may be used and the binding and covers specified are not required. Three copies of each brief must be filed. The times for filing briefs will ordinarily be set in the order setting times for taking testimony.

Paragraphs (a) and (b) of § 1.258 are amended to read as follows:

§ 1.258 Matters considered in determining priority.

(a) In determining priority of invention, the Board of Patent Interferences will consider only priority of invention on the evidence submitted. Questions of patentability of a claim generally will not be considered in the decision on priority; and neither will the patentability of a claim to an opponent be considered, unless the nonpatentability of the claim to the opponent will necessarily result in the conclusion that the party raising the question is in fact the prior inventor on the evidence before the Office, or relates to matters which have been

determined to be ancillary to priority and must be considered, but a party shall not be entitled to raise such nonpatentability unless he has duly presented a motion for dissolution under § 1.231 upon such ground or shows good reason why such a motion was not presented.

(b) The matters raised on a motion relating to the burden of proof (§ 1.231) may be reviewed at final hearing.

Section 1.261 is amended to read as follows:

§ 1.261 Termination of interference.

An interference will be terminated by judgment after final hearing (§§ 1.251 to 1.259), or by judgment on the record as provided by § 1.225 or § 1.252, or by summary judgment because of an insufficient showing under § 1.204(c) as provided by § 1.228, or by dissolution as provided by § 1.231 or § 1.237, or as otherwise provided.

Paragraph (c) of § 1.272 is amended to read as follows:

§ 1.272 Manner of taking testimony.

(c) By agreement of the parties, the testimony of any witness or witnesses of any party, may be submitted in the form of an affidavit by such witness or witnesses. The parties may stipulate what a particular witness would testify to if called, or the facts in the case of any party may be stipulated. When evidence is submitted in one of these forms, four copies of such affidavit or stipulated testimony (§ 1.253(a)(f)) are required.

Paragraph (b) of § 1.282 is amended to read as follows:

§ 1.282 Official records and printed publications.

(b) In the case of prior applications, the filing date of which is claimed, compliance with the requirements of §§ 1.224 and 1.231 is sufficient notice under this section.

The text of § 3.44 (Form 3.44) is revised as follows:

§ 3.44 Interference; preliminary statement of domestic inventor.

PRELIMINARY STATEMENT

 v. _____ } Interference No. _____
 _____ } ss. _____
 _____, being duly sworn (or affirmed),
 deposes and says that he is a party to the
 above identified interference, that he made
 the invention set forth by the counts of the
 interference in the United States; that
 (1) The first drawing of the invention was
 (give specific nature of the drawing) made
 on _____, 19____. A copy is attached.
 (2) The first written description of the
 invention was in the form of a (give specific
 nature of the document) and was made on
 _____, 19____. A copy is attached.
 (3) The invention was first disclosed to
 others on _____, 19____, when (give brief
 description of circumstances).
 (4) The date of the first act or acts susceptible of proof, other than acts of the character specified in (1), (2), and (3) which, if proven would establish conception of the invention, and a brief description of such

act or acts are (e.g. the making of a non-operating model on _____, 19__).

(5) The invention was actually reduced to practice on _____, 19__ by (give brief description of the acts to be relied on).

(6) Active exercise of reasonable diligence toward reducing the invention to practice began on _____, 19__ and comprised (give brief description of the nature of the activity to be relied on).

(Signature of inventor)
Subscribed and sworn to (or affirmed before me this _____ day of _____, 19__
[SEAL]
(Signature of notary public or officer)
(Official character)

If there were no act corresponding to this allegation prior to the filing date of the application, it must be so stated. Note, however, date of completion of application drawing and specification, date of disclosure to person preparing the application, and diligence in preparing the application.

(Sec. 1, 66 Stat. 793, 35 U.S.C. 6)

EDWARD J. BRENNER,
Commissioner of Patents.

Approved: April 30, 1965.

WILLIAM W. EATON,
Deputy Assistant Secretary for
Science and Technology.

[F.R. Doc. 65-5143; Filed, May 13, 1965;
8:49 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

DISAPPEARANCE OF VETERAN

In § 3.656, paragraph (a) is amended to read as follows:

§ 3.656 Disappearance of veteran.

(a) When any veteran has disappeared for 90 days or more and his whereabouts remain unknown to the members of his family and the Veterans Administration, disability compensation which he was receiving or entitled to receive may be paid to or for his wife, children and parents, effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from the date of receipt of a claim. The total amount payable will be the lesser of these amounts:

- (1) Dependency and indemnity compensation.
- (2) Amount of compensation payable to the veteran at the time of disappearance, subject to authorized insurance deductions.

(72 Stat. 1114; 38 U.S.C. 210)

This VA Regulation is effective December 1, 1962.

By direction of the Administrator.

Approved: May 10, 1965.

[SEAL] CYRIL F. BRICKFIELD,
Deputy Administrator.

[F.R. Doc. 65-5100; Filed, May 13, 1965;
8:46 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 101—Federal Property Management Regulations

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 101-44—DONATION OF PERSONAL PROPERTY

Subpart 101-44.3—Donation for Educational, Public Health, and Civil Defense, Including Research or Public Airport Purposes

SCREENING OF SURPLUS ELECTRONIC PROPERTY

1. The table of contents of Part 101-44 is amended by adding the following entry:

Sec.
101-44.319 Expedited donation screening of surplus electronic property.

2. Subpart 101-44.3 is amended by adding § 101-44.319, as follows:

§ 101-44.319 Expedited donation screening of surplus electronic property.

(a) *General.* In order to expedite the donation of surplus electronic property for use in instructional and research programs conducted by educational institutions, certain specified types of surplus electronic equipment and components may be made available at a military holding activity, or upon approval of GSA at a civilian agency activity, for on-site screening.

(b) *Availability of electronic property.* Surplus electronic property for which the holding activity maintains accountability by weight or line item, and which is scrap or salvage as defined in § 101-43.104 may be made available for donation screening. Such property will normally be classified under FSC Groups 58, 59, 66 and 69 but may include similar electronic items classified under other FSC Groups. Items which are clearly not electronic items, such as aircraft and missile parts and components, test or laboratory equipment, or maintenance equipment and supplies will not be included in the screening.

(c) *Scheduling of screening.* The holding activity will notify the appropriate GSA regional office not less than 15 days prior to the date the on-site donation screening is scheduled to start, so that all necessary arrangements can be coordinated and agreed upon. On-site donation screening must be scheduled to begin when the property becomes surplus, after the end of the utilization screening period.

(d) *Participation.* Participation in these screening sessions is limited to accredited representatives of State agencies and science teachers and instructors from those eligible educational institutions, including maritime academies and military, Naval, Air Force or Coast

Guard preparatory schools, designated by State agencies to attend such sessions.

(e) *Screening.* Screening sessions for surplus electronic property shall be conducted as follows:

(1) The donation screening period will be limited to the specific dates established by the agreement respecting the particular location. Generally, the screening period should not exceed 5 working days, except for those continuing programs carried out in accordance with this § 101-44.319.

(2) The electronic property selected for the screening session will be set aside in separate areas by the holding activity to facilitate screening by the participants.

(3) Authorized GSA and DHEW representatives will be present during all screening periods, except as provided in this § 101-44.319.

(4) In the case of property for which accountability is maintained by the Property Disposal Officer on a line item basis, the authorized DHEW representative will prepare SF 123, Construction Contract, listing the property selected for donation, and showing the item description, number of units, condition, and unit and total acquisition cost.

(5) When the property selected is accounted for by weight, the authorized DHEW representative will prepare SF 123 identifying the property as miscellaneous electronic items in FSC Groups 58, 59, 66, and 69 or other FSC Groups covering similar electronic items, as applicable, followed by a brief description of the types of items selected, e.g., tubes, tuners, receivers, condensers, etc. The total acquisition cost, actual or estimated, must be shown on the form. When the acquisition cost is computed by conversion of weight to dollars, or by other acceptable methods, care should be taken to reflect a value which is compatible with the original acquisition cost of the property.

(6) The DHEW representative should prepare and sign SF 123 at the site on a daily basis for the property selected. Upon approval by the GSA representative, the holding activity shall release the property. Processing of donation documents shall be expedited to insure that the property is removed at the end of each daily session. No property shall be released until after the donation is approved by the GSA representative.

(7) If the on-site donation screening is conducted on a continuing day-to-day basis, under procedures previously agreed to in writing between GSA, the holding activity, DHEW, and the State agency concerned, the presence of authorized GSA and DHEW representatives is not required. Arrangements may provide for processing of the essential donation documents subsequent to the on-site screening and removal of the property.

(Sec. 205(c), 63 Stat. 390; U.S.C. 486(c))

Effective date. This amendment is effective June 1, 1965.

Dated: May 7, 1965.

LAWSON B. KNOTT, JR.,
Acting Administrator
of General Services.

[F.R. Doc. 65-5121; Filed, May 13, 1965;
8:48 a.m.]

Proposed Rule Making

CIVIL AERONAUTICS BOARD

[14 CFR Part 399]

[Docket 16151]

STATEMENTS OF GENERAL POLICY

Passing Off of Foreign Carrier Affiliates and System Relationships of Air Carriers

MAY 11, 1965.

Notice is hereby given that the Civil Aeronautics Board has under consideration a proposed addition to Part 399, Statements of General Policy, which would express the Board's policy of considering certain public references to affiliate and system relationships between an air carrier and foreign air carrier as contrary to the public interest.

This regulation is proposed under the authority of sections 102 (b), (c), (d), 204(a) of the Federal Aviation Act of 1958 (72 Stat. 740, 743); 49 U.S.C. 1302, 1324, and section 3 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1002).

Interested persons may participate in the proposed rule making through submission of ten (10) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C., 20428. All relevant matter in communications received on or before June 14, 1965, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 710, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., upon receipt thereof.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

Explanatory statement. The Board has been concerned with public holding out of relationships between air carriers and foreign air carriers which create the impression that the air transportation performed by related carriers is part of a unified transportation system. Such holding out may tend to create the impression that the air travel is being performed by one carrier when it is in fact being performed by another. The public references which create such an impression may constitute an unfair or deceptive practice or an unfair method of competition in air transportation or the sale thereof, or may be otherwise contrary to the public interest. This passing off may arise in situations where the air carrier and foreign air carrier have entered into agency relationships under which a carrier represents or performs services in one country for the benefit or on behalf of the carrier from another country. In cases where the air carrier has a financial interest in the foreign air

carrier there is a greater likelihood that the agency relationship may develop into such a passing off situation.

A number of cases of this character have been dealt with by the Board in proceedings under section 401, 402, 408, or 412 of the Act. The need to introduce passing off issues into route proceedings under section 401 or 402, into control relationships considered under section 408, or carrier agreements processed under section 412, may be reduced by a declaration of Board policy. A statement of Board policy would guide carriers in their relationships and enable them to avoid arrangements likely to develop into passing off problems.

The Board therefore has under consideration the adoption of a policy stating its standard of judging when the public holding out of relationships between air carriers and foreign air carriers may constitute an unfair or deceptive practice.

It is proposed to amend Part 399, Statements of General Policy (14 CFR Part 399), by adding a new § 399... to read:

§ 399... Passing off of carrier identity by affiliation between carriers.

(a) **Applicability.** This policy shall apply to proceedings in which the Board, in exercising its regulatory powers with respect to air carriers and foreign air carriers, is required to determine whether carriers have engaged in unfair or deceptive practices, or unfair methods of competition. The standards herein shall not be construed to supersede any action previously taken by the Board in a particular proceeding dealing with the subject matter of this statement, but to the extent not inconsistent therewith shall provide standards which supplement, or implement such specific Board action.

(b) **Definition.** For the purpose of this statement the term "affiliation" as between an air carrier and a foreign air carrier, shall mean that one of the carriers directly or indirectly has one of the following relationships to the other:

(1) Owns or controls 10 percent or more of the securities of the other, with or without an accompanying power to vote;

(2) Is in control of the other within the meaning of section 408 of the Act;

(3) Has any of the interlocking relationships described in section 409 of the Act;

(4) Is jointly controlled with the other carrier, directly or indirectly by a third person;

(5) Provides general agency services for the other carrier.

For the purpose of this statement "general agency services" shall mean services performed under an agreement between an air carrier and a foreign air carrier which provides for the general representation of one by the other in a specified area or point, in relation to services such as the following: Solicita-

tion and sale of passenger, express, and cargo transportation; airport transportation and hotel accommodations; local advertising and publicity; local sales offices; passenger services; local government representation; purchase, lease, or other acquisition of equipment; or aircraft and transit services, aircraft inspection, aircraft dispatch.

(c) **Minimum safeguards.** The minimum safeguards which the Board will consider as adequate to foreclose passing off by affiliated carriers are as follows:

(1) An air carrier and any affiliated foreign air carrier shall not engage in joint public relations activities at points served by both carriers which tend to pass off the services of one carrier as the services of the other carrier or as part of a unified system of which each is a part;

(2) Where one affiliated carrier provides general agency services for the other carrier, at points served by both carriers, it shall specifically identify all flights of the other carrier as flights of that carrier without reference to any relationship to the carrier performing the agency services;

(3) All forms of display (including aircraft insignia), schedule publications, advertising, or printed matter employed by affiliated carriers shall not state or imply that the services of either carrier is performed in common with the other carrier or as part of a single system. In cases where it is necessary to indicate that any agency service is performed by one affiliated carrier for the other, the references to the carrier performing the agency should be sufficiently subordinated to the name of the other carrier as to emphasize the limited role of the agent;

(4) Telephone facilities at points served by both carriers should preserve the identity of the individual carriers;

(5) Where joint traffic or sales facilities are maintained by affiliated carriers, the separate identity of each carrier should be maintained by reasonably comparable use of display advertising, desk space, personnel uniforms, and other facilities and activities;

(6) Where one carrier sells time payment tickets for travel over the other carrier (except interline travel), the application form should identify the carrier performing the transportation;

(7) The respective personnel of the affiliated carriers shall preserve the individual identity of the respective carriers in all public dealings.

(d) **Unfair and deceptive practice.** It is the policy of the Board to regard any joint activity of an affiliated air carrier and a foreign air carrier as an unfair or deceptive practice or unfair method of competition where such joint activity does not satisfy the minimum safeguards enumerated in the preceding subsection.

[F.R. Doc. 65-5142; Filed, May 13, 1965; 8:48 a.m.]